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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1H 2008 185

DAVID L. GORDLEY  
2541 Kent Drive #7  
Sacramento, CA 95821

**A C C U S A T I O N**

Respiratory care practitioner license No. 10331

Respondent.

Complainant alleges:

**PARTIES**

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about June 6, 1986, the Respiratory Care Board issued Respiratory care practitioner license Number 10331 to David L. Gordley (Respondent). The Respiratory care practitioner license was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2010, unless renewed.

**JURISDICTION**

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2           4.       Section 3710 of the Code states: “The Respiratory Care Board of  
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter  
4 8.3, the Respiratory Care Practice Act].”

5           5.       Section 3718 of the Code states: “The board shall issue, deny, suspend,  
6 and revoke licenses to practice respiratory care as provided in this chapter.”

7           6.       Section 3750 of the Code states:

8           “The board may order the denial, suspension or revocation of, or the imposition of  
9 probationary conditions upon, a license issued under this chapter, for any of the following  
10 causes:

11           “(g) Conviction of a violation of any of the provisions of this chapter or of any  
12 provision of Division 2 (commencing with Section 500), or violating, or attempting to  
13 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to  
14 violate any provision or term of this chapter or of any provision of Division 2  
15 (commencing with Section 500).

16           “(j) The commission of any fraudulent, dishonest, or corrupt act which is  
17 substantially related to the qualifications, functions, or duties of a respiratory care  
18 practitioner.

19           7.       Section 726 of the Code states:

20           “The commission of any act of sexual abuse, misconduct, or relations with a  
21 patient, client, or customer constitutes unprofessional conduct and grounds for  
22 disciplinary action for any person licensed under this division, under any initiative act  
23 referred to in this division and under Chapter 17 (commencing with Section 9000) of  
24 Division 3.

25           8.       Section 3752.7 of the Code states:

26           “Notwithstanding Section 3750, any proposed decision or decision issued under  
27 this chapter [Chapter 8.3, the Respiratory Care Practice Act] in accordance with the  
28 procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division

1 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or  
2 registrant engaged in any act of sexual contact, as defined in Section 729, with a patient,  
3 or has committed an act or been convicted of a sex offense as defined in Section 44010 of  
4 the Education Code, shall contain an order of revocation. The revocation shall not be  
5 stayed by the administrative law judge. For purposes of this section, the patient shall no  
6 longer be considered a patient of the respiratory care practitioner when the order for  
7 respiratory procedures is terminated, discontinued, or not renewed by the prescribing  
8 physician and surgeon.”

9 9. Section 3755 of the Code states:

10 “The board may take action against any respiratory care practitioner who is  
11 charged with unprofessional conduct in administering, or attempting to administer, direct  
12 or indirect respiratory care. Unprofessional conduct includes, but is not limited to,  
13 repeated acts of clearly administering directly or indirectly inappropriate or unsafe  
14 respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or  
15 monitoring techniques, and violation of any provision of Section 3750. The board may  
16 determine unprofessional conduct involving any and all aspects of respiratory care  
17 performed by anyone licensed as a respiratory care practitioner.”

18 10. California Code of Regulations, title 16, section 1399.370, states:

19 “For the purposes of denial, suspension, or revocation of a license, a crime or act  
20 shall be considered to be substantially related to the qualifications, functions or duties of  
21 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to  
22 perform the functions authorized by his or her license or in a manner inconsistent with the  
23 public health, safety, or welfare. Such crimes or acts shall include but not be limited to  
24 those involving the following:

25 “(a) Violating or attempting to violate, directly or indirectly, or assisting or  
26 abetting the violation of or conspiring to violate any provision or term of the Act.”

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1 COST RECOVERY

2 11. Section 3753.5, subdivision (a) of the Code states:

3 "In any order issued in resolution of a disciplinary proceeding before the board,  
4 the board or the administrative law judge may direct any practitioner or applicant found to have  
5 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the  
6 investigation and prosecution of the case."

7 12. Section 3753.7 of the Code states:

8 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall  
9 include attorney general or other prosecuting attorney fees, expert witness fees, and other  
10 administrative, filing, and service fees."

11 13. Section 3753.1 of the Code states:

12 "(a) An administrative disciplinary decision imposing terms of probation may  
13 include, among other things, a requirement that the licensee-probationer pay the monetary costs  
14 associated with monitoring the probation."

15 FIRST CAUSE FOR DISCIPLINE

16 (Sexual Misconduct/abuse)

17 14. Respondent is subject to disciplinary action under code sections 3750(j)  
18 [corrupt act] and section 726 [sexual misconduct/abuse] in that he engaged in inappropriate  
19 sexual contact with a patient. The circumstances are as follows:

20 15. On or about January 21, 2005, at approximately 3:00 p.m., Patient A., a  
21 74-year old female, was transported via ambulance to the Emergency Department at Kaiser  
22 Hospital in Sacramento, California. Patient A. complained of shortness of breath and feeling  
23 disoriented for four days. She had a history of congestive heart failure, cardiopulmonary  
24 obstructive disease (COPD), diabetes, and had been previously hospitalized at Kaiser for  
25 hypercarbia and hypoxia.

26 16. On January 21, 2005, Patient A. was evaluated in the Emergency  
27 Department and treated. At approximately 9:00 p.m., her condition was stable and she was  
28 admitted to Kaiser Hospital. Patient A.'s attending physician, Usman Afzal, M.D., diagnosed her

1 as experiencing respiratory failure, COPD exacerbation, and severe obstructive sleep apnea. He  
2 wrote orders for respiratory treatments and medications, including Albuterol nebulizer 2.5  
3 miligrams (mg) every two hours for shortness of breath and wheezing; Atrovent nebulizer every  
4 six hours around the clock and every two hours for shortness of breath and wheezing; xopenex  
5 nebulizer 0.625 mg every six hours around the clock, and 40 mg. methylprednisolone  
6 intravenously every six hours.

7           17. On or about January 22, 2008, respondent was employed as a respiratory  
8 care practitioner at Kaiser Foundation Hospital in Sacramento, California. On that date, he was  
9 assigned to provide respiratory treatment to Patient A.

10           18. On or about January 22, 2008, at approximately 0800 hours (8:00 a.m.),  
11 Respondent entered Patient A.'s room to check her bi-pap machine and administer an in-line  
12 treatment. Patient A. was sitting up in bed, dozing and watching television. She wore a bi-pap  
13 mask and hospital gown. Respondent adjusted the ventilator equipment, performed the  
14 treatment, checked A.'s breath sounds, and charted his actions. He then reached underneath  
15 Patient A.'s hospital gown, and touched her breasts with his hand. Respondent was not  
16 performing a respiratory treatment when he touched Patient A.'s breasts. During this time,  
17 Respondent did not speak, and when Patient A. moved, Respondent left the room.

18           19. At approximately 0840 hours (8:40 a.m.), Respondent entered Patient A.'s  
19 room. He stood beside her bed, reached underneath her hospital gown, and using his hand,  
20 touched her breasts. Patient A. asked him, "What the hell are you doing?." Respondent removed  
21 his hand from underneath her gown, and immediately left the room.

22           20. Soon after 0840 hours (8:40 a.m.), S.G., the 5<sup>th</sup> floor charge nurse, entered  
23 Patient A.'s room to deliver breakfast. Patient A. told S.G., "That man you were just talking to  
24 grabbed my breasts." Patient A. pointed outside the room to Respondent. S.G. immediately  
25 called S.P., Patient A.'s primary nurse, to come into the room and speak to the patient. Patient  
26 A. repeated her statement to S.P. The nurses contacted Kaiser administrators, who conducted an  
27 investigation of the incident. On or about March 27, 2008, respondent's employment was  
28 terminated, and L. T., Director of Adult Services at Kaiser, filed an Employer Mandatory

1 Reporting Form pursuant to code section 3758.

2 21. Respondent is subject to disciplinary action under code sections 726 and  
3 3750(j) in that he inappropriately touched Patient A.'s breasts which was not a part of her  
4 respiratory treatment.

5 SECOND CAUSE FOR DISCIPLINE

6 (Unprofessional conduct)

7 22. Paragraphs 14 through 20 are incorporated herein.

8 23. Respondent's actions constitute unprofessional conduct and are cause for  
9 discipline pursuant to code section 3755.

10 PRAYER

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
12 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

13 1. Revoking or suspending Respiratory care practitioner license Number  
14 10331, issued to David L. Gordley.

15 2. Ordering David L. Gordley to pay the Respiratory Care Board the costs of  
16 the investigation and enforcement of this case, and if placed on probation, the costs of probation  
17 monitoring;

18 3. Taking such other and further action as deemed necessary and proper.

19  
20 DATED: November 25, 2008

21  
22 Original signed by Liane Zimmerman for:  
23 STEPHANIE NUNEZ  
24 Executive Officer  
25 Respiratory Care Board of California  
26 Department of Consumer Affairs  
27 State of California  
28 Complainant

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